

**DEPARTMENT OF STATE REVENUE**

**FIRST SUPPLEMENTAL LETTER OF FINDINGS 93-0873 CSET  
Controlled Substance Excise Tax  
For Tax Periods: 1993**

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**ISSUE**

**1. CONTROLLED SUBSTANCE EXCISE TAX: DOUBLE JEOPARDY**

**Authority:** IC 6-7-3-5; United States Constitution Amendments 5 and 14, Bryant v. State of Indiana, 660 N.E. 2d 310 (Ind. 1995)

Taxpayer protests the assessment of Controlled Substance Excise Tax.

**2. CONTROLLED SUBSTANCE EXCISE TAX: SEARCH**

**Authority:** United States Constitution Amendment 4

Taxpayer protests the use of evidence gained from a search.

**3. CONTROLLED SUBSTANCE EXCISE TAX: EXCESSIVE PENALTY**

**Authority:** United States Constitution Amendment 8

Taxpayer contends the tax is an unconstitutional excessive fine.

**STATEMENT OF FACTS**

Taxpayer was arrested for possession of marijuana. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on October 12, 1993 in a base tax amount of \$1,421,564.00. Taxpayer filed protest to the assessment. Further facts will be provided as necessary.

## **1. Controlled Substance Excise Tax: Double Jeopardy**

### **DISCUSSION**

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of Marijuana in the State of Indiana. The Fifth and Fourteenth Amendments of the United States Constitution prohibit placing any citizen in jeopardy twice for the same action. Jeopardy attaches when a determination of guilt is made and a person is put at risk of punishment. Bryant v. State of Indiana, 660 N.E. 2d(Indiana, 1995) In the instant case, the Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand put Taxpayer at risk of punishment or in jeopardy on October 12, 1993. Any criminal jeopardy didn't attach until after the Department issued the Jeopardy Assessment. Therefore the Department's jeopardy assessment was the constitutionally permissible jeopardy in this situation.

### **FINDING**

Taxpayer's protest is denied.

## **2. Controlled Substance Excise Tax: Search**

### **DISCUSSION**

Taxpayer's criminal case was dismissed after the Judge determined the search violated the constitutional prohibition against illegal searches. The 4<sup>th</sup> Amendment to the United States Constitution applies to searches in criminal actions. The Indiana Department of Revenue case is, however, a civil action rather than a criminal action.

### **FINDING**

Taxpayer's protest is denied.

## **3. Controlled Substance Excise Tax: Excessive Penalty**

Taxpayer contends that the taxes in this instance constitute an excessive penalty in violation of the 8<sup>th</sup> Amendment to the United States Constitution. The 8th Amendment to the United States Constitution applies to penalties in criminal actions. The tax is, however, a civil issue rather than a criminal issue.

### **FINDING**

Taxpayer's protest is denied.